

Message Text

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CEQ-01 CG-00 CIAE-00 CIEP-02 OFA-01 COME-00 DODE-00

DOT-00 EB-07 EPA-04 ERDA-07 FMC-02 H-02 INR-07

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FROM USDEL LOS

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TAGS: PLOS

SUBJECT: LOS: COMMITTEE I WORKING GROUP MEETING, 1 APRIL 1975

1. SUMMARY. PINTO AGAIN FOCUSED DISCUSSION ON BASIC CONDITIONS 4 (STAGES OF OPERATIONS) AND 5 (ARRANGEMENTS RELATING TO ACTIVITIES), AND ISSUES RELATING TO SETTLEMENT OF DISPUTES (SECURITY OF TENURE, ENFORCEMENT, FORCE MAJEURE, SUSPENSION OF ARRANGEMENTS ENTERED INTO). DEBATE CENTERED ON PROPRIETY OF JOINT VENTURE AS COMMON NORM, AND DEFINITION OF TERM. US ADDRESSED SECURITY OF TENURE, SUSPENSION AND TERMINATION OF ARRANGEMENTS, AND FORCE MAJEURE. END SUMMARY

2. NIGERIA, WHILE STATING LEGAL ARRANGEMENTS WOULD VARY WITH EACH STAGE OF OPERATIONS CONTAINED IN GROUP OF 77 DRAFT, ENDORSED JOINT VENTURE AS PROSPECT WORTH EXPLORING AND INDICATED TERM COULD MEAN ARRANGEMENT OR ASSOCIATION OF COMPANIES, SERIES UNCLASSIFIED

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OF CONTRACTS, OR NEW LEGAL ENTITY WITH OWN PERSONALITY.

HE SPECIFICALLY MENTIONED SERVICE CONTRACTS AND TURNKEY CONTRACTS AS POSSIBLE MEANS FOR AUTHORITY'S DIRECT EXPLOITATION IN AREAS RESERVED FOR THAT PURPOSE. NIGERIAN REP ALSO PROPOSED STUDY BE PREPARED BY UNCTAD ON OPERATIONAL ASPECTS OF JOINT VENTURE AND OTHER ARRANGEMENTS.

3. US (RATINER) INDICATED USE OF SERVICE CONTRACTS IN RELINGUISHED OR RESERVED AREAS BY AUTHORITY DIFFERED LITTLE FROM DIRECT EXPLOITATION BY AUTHORITY, BUT THAT POSSIBILITY FOR RESERVATION OF AREAS FOR LDC'S MIGHT BE EXPLORED. US STATED WG SHOULD NOT CONFUSE CONCEPTS OF PROFIT SHARING AND EQUITY PARTICIPATION, WHICH WOULD REQUIRE AUTHORITY TO CONTRIBUTE CAPITAL TO JOINT VENTURE. HE SUGGESTED UNCTAD NOT PROPER FORUM FOR PREPARATION OF STUDY PROPOSED BY NIGERIANS. PROTECTION OF SECURITY OF TENURE MUST BE EMBODIED IN TREATY, NOT MERELY A VAGUE OBLIGATION OF AUTHORITY. SUSPENSION AND TERMINATION SHOULD BE REGARDED AS SERIOUS PENALTIES TO BE PRECEDED BY LESS SERIOUS ONES (E.G., FINES), AND IN ANY CASE WOULD ONLY BE IMPOSED BY DECISION OF DISPUTE SETTLEMENT ORGAN. AUTHORITY SHOULD HAVE DISPUTE SETTLEMENT ORGAN OF ITS OWN, WITH JURISDICTION TO GRANT INJUNCTIVE RELIEF.

4. PINTO, REFERRING TO NIGERIAN STATEMENT ON JOINT VENTURES, URGED WG TO CONSIDER DEFINITION OF CONCEPT, WHICH WOULD REFER TO TEMPORARY ASSOCIATION, PARTNERSHIP, OR NEW LEGAL ENTITY. ARTICLE 17 OF GROUP OF 77 DRAFT WOULD INSULATE JOINT VENTURE FROM DOMESTIC LEGAL SYSTEMS, AND GIVEN INTERNATIONAL CORPORATE LAW VACUUM, JOINT VENTURE AS AN INDEPENDENT LEGAL ENTITY COULD NOT EXIST, AND COULD EXIST ONLY CONTRACTUALLY WITH REFERENCE TO CONVENTION ARTICLES, RULES AND REGULATIONS, AND CONTRACTUAL ARRANGEMENTS. OF LATTER, NO QUESTION OF EQUITY PARTICIPATION WOULD ARISE, AS WOULD ONLY BE EX CONTRACTU.

5. PERU, IN RESPONSE, EMPHASIZED DISTINCTION IN GROUP OF 77 DRAFT BETWEEN SERVICE CONTRACTS AND DIRECT EXPLOITATION BY AUTHORITY AND SUPPORTED NIGERIAN PROPOSAL TO HAVE OBJECTIVE REPORT ON OPERATIONAL ASPECTS OF JOINT VENTURES MADE BY UN SECRETARIAT. PERUVIAN REP EXPLAINED

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JOINT VENTURES MUST GUARANTEE AUTHORITY CONTROL OVER FINANCIAL SHARES AND ADMINISTRATION, THAT JOINT VENTURES NOT MERELY CONTRACTUAL, AND THAT QUESTION MERELY TECHNICAL PROBLEM. PINTO, INDICATING DIFFICULTY WITH EXPLANATION, QUERIED HOW AUTHORITY COULD HAVE MAJORITY CONTROL OF HOLDINGS ARISING EX CONTRACTU, SCHEDULED NEXT WG MEETING THURSDAY, 3 APRIL. DALE

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